

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

THE TRUSTEES OF COLUMBIA  
UNIVERSITY IN THE CITY OF NEW  
YORK,

*Plaintiff,*

v.

NORTONLIFELOCK INC.,

*Defendant.*

Civil Action No. 3:13-cv-00808-MHL

**JOINT STIPULATION RESOLVING DISPUTE  
OVER ADVICE OF COUNSEL DEFENSE**

Plaintiff, the Trustees of Columbia University in the City of New York (“Columbia”), and Defendant NortonLifeLock Inc. (“Norton”), resolve a disagreement concerning Columbia’s concern that Norton would assert, directly or indirectly, an advice of counsel defense to its fraudulent concealment claim by stipulating as follows:

1. Norton will not assert that it cannot be held liable on the fraudulent concealment claim on the basis that it relied on the advice of counsel.
2. Norton will not assert that it cannot be held liable on the fraudulent concealment claim based any act, omission, or mistake of its in-house or outside counsel, nor will it blame its counsel as a defense to the fraudulent concealment claim. Notwithstanding the foregoing, but without modifying it, Norton shall not be precluded from arguing that the evidence does not prove Norton’s deceptive intent, including the intent of Mr. Shou and counsel, and that the evidence does not prove concealment, fraud, or fraudulent concealment.

3. Norton may offer the testimony of Darren Shou concerning his recollection of the facts and actions that occurred concerning the prosecution of the 643 patent including the facts concerning what he did personally with respect to the selection of inventors for the applications that led to the 643 patent, but Mr. Shou shall not offer an opinion as to what is customary practice generally when undergoing the process of applying for a patent at Norton, including with respect to inventorship. Notwithstanding the foregoing, Mr. Shou may testify as to his personal experience concerning seeking patents and being named as an inventor on patents personally (see, e.g., Dep Tr. 217:6-9).

4. Norton will not offer any testimony or other evidence concerning what advice its lawyers provided to Darren Shou or others, or communications Mr. Shou or others had with Norton's lawyers beyond those already disclosed, nor will it offer any testimony or other evidence concerning the actions of its lawyers aside from nonprivileged actions consistent with those disclosed in the depositions in this case.

5. Norton will not offer testimony or evidence that the decision as to who should be listed as inventors on the applications that led to the '643 patent was the decision or act of its counsel except to the extent it offers testimony and evidence (e.g., admissible emails on the parties' high priority lists) already given in this case (though it need not be verbatim and can provide necessary context). Norton reserves the right to revisit this rule if it believes Columbia has opened the door, but would not proceed with such questions without first approaching Columbia's counsel (and the Court if necessary) outside the presence of the jury.

6. Columbia reserves all objections to the admissibility of hearsay statements notwithstanding the foregoing.

7. Consistent with the testimony offered in this case to date and the testimony that Norton may offer consistent with previous depositions, Norton may make arguments with respect to what Mr. Shou personally did or knows, provided he does not testify that the lawyers told him that the inventorship was proper or otherwise identify, reference, or rely upon any statement or document that was withheld on the basis of privilege.

8. To be clear, notwithstanding any of the above, Mr. Shou will be allowed to give the testimony he provided at his deposition, and it need not be verbatim (e.g., he can give context to that testimony, e.g., who people are, when it occurred, and the like). And to avoid any confusion, Mr. Shou shall also be permitted to testify consistent with the Federal Rules of Evidence concerning other matters, including, without limitation, his background, the company's background and organization, his discussions with Columbia's professors and employees, and his knowledge about the accused technology and products.

Dated: April 17, 2022

Respectfully submitted,

/s/ John M. Erbach

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